

No. 4:05-CR-50-H1
No. 4:12-CV-182-H

ORDER

This matter is before the court on petitioner's motion to vacate or set aside sentence pursuant to 28 U.S.C. § 2255, filed August 16, 2012 [DE #38]. Petitioner previously filed a § 2255 motion, which the court denied on the merits on October 3, 2007. Because the motion presently before the court is a successive § 2255 motion, this court is without jurisdiction to consider it. See 28 U.S.C. § 2255(h) ("A second or successive motion must be certified . . . by a panel of the appropriate court of appeals"). Accordingly, petitioner's motion to vacate is DISMISSED WITHOUT PREJUDICE to petitioner's right to apply to the Fourth Circuit for leave to file a successive § 2255 motion.

the denial of a constitutional right. Accordingly, a certificate of appealability is not issued as to this order.

This 31st day of August 2012.

A handwritten signature in black ink, appearing to read "Malcolm J. Howard", is written over a horizontal line.

MALCOLM J. HOWARD

Senior United States District Judge

At Greenville, NC
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